



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2006 REGULAR SESSION

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HOUSE BILL NO. 388

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THURSDAY, FEBRUARY 9, 2006

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The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED  
DATE April 4, 2006  
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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

AN ACT relating to workers' compensation and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

Section 1. KRS 342.122 is amended to read as follows:

- (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Department of Labor, except the Division of Employment Standards, Apprenticeship and Training and the Office of Labor-Management Relations and Mediation, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.
- (b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of June 30~~[September 1]~~ preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the

1 amount of workers' compensation premiums received by every insurance  
 2 carrier writing workers' compensation insurance in the Commonwealth, by  
 3 every self-insured group operating under the provisions of KRS 342.350(4)  
 4 and Chapter 304, and against the premium, as defined in KRS 342.0011, of  
 5 every employer carrying his own risk. On or before October 1 of each year,  
 6 the commission shall notify each insurance carrier writing workers'  
 7 compensation insurance in the Commonwealth, every group of self-insured  
 8 employers, and each employer carrying his or her own risk, of the rates  
 9 which shall become effective on January 1 of each year, unless modified by  
 10 the General Assembly.

11 (c) In addition to the assessment imposed in paragraph (a) or (b) of this  
 12 subsection, and notwithstanding and prior to the transfer of funds to the Local  
 13 Government Economic Assistance Program under KRS 42.450 to 42.495, the  
 14 Kentucky Department of Revenue shall credit nineteen million dollars  
 15 (\$19,000,000) in coal severance tax revenues levied under KRS 143.020 to  
 16 the benefit reserve fund within the Kentucky Workers' Compensation Funding  
 17 Commission each year beginning with fiscal year 1998 and all fiscal years  
 18 thereafter. The annual transfer of nineteen million dollars (\$19,000,000) shall  
 19 occur in four (4) equal quarterly payments. These transfers shall occur not  
 20 later than the last day of each quarter of each calendar year and shall consist of  
 21 four (4) equal payments of four million, seven hundred fifty thousand dollars  
 22 (\$4,750,000).

23 (d) All assessments imposed by this section shall be paid to the Kentucky  
 24 Workers' Compensation Funding Commission and shall be credited to the  
 25 benefit reserve fund within the Kentucky Workers' Compensation Funding  
 26 Commission.

27 (e) The assessments imposed in this chapter shall be in lieu of all other

1 assessments or taxes on workers' compensation premiums.

2 (2) These assessments shall be paid quarterly not later than the thirtieth day of the  
3 month following the end of the quarter in which the premium is received. Receipt  
4 shall be considered timely through actual physical receipt or by postmark of the  
5 United States Postal Service. Employers carrying their own risk and employers  
6 defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal  
7 quarterly installments.

8 (3) The assessments imposed by this section may be collected by the insurance carrier  
9 from his insured. However, the insurance carrier shall not collect from the employer  
10 any amount exceeding the assessments imposed pursuant to this section. If the  
11 insurance carrier collects the assessment from an insured, the assessment shall be  
12 collected at the same time and in the same proportion as the premium is collected.  
13 The assessment for an insurance policy or other evidence of coverage providing a  
14 deductible may be collected in accordance with this chapter on a premium amount  
15 that equates to the premium that would have applied without the deductible. Each  
16 statement from an insurance carrier presented to an insured reflecting premium and  
17 assessment amounts shall clearly identify and distinguish the amount to be paid for  
18 premium and the amount to be paid for assessments. No insurance carrier shall  
19 collect from an insured an amount in excess of the assessment percentages imposed  
20 by this chapter. The assessment for an insurance policy or other evidence of  
21 coverage providing a deductible may be collected in accordance with this chapter on  
22 a premium amount that equates to the premium that would have applied without the  
23 deductible. The percentages imposed by this chapter for an insurance policy issued  
24 by an insurance company shall be those percentages in effect on the annual effective  
25 date of the policy, regardless of the date that the premium is actually received by the  
26 insurance company.

27 (4) A self-insured group may elect to report its premiums and to have its assessments

1        computed in the same manner as insurance companies. This election may not be  
2        rescinded for at least ten (10) years, nor may this election be made a second time for  
3        at least another ten (10) years, except that the board of directors of the funding  
4        commission may, at its discretion, waive the ten (10) year ban on a case-by-case  
5        basis after formal petition has been made to the funding commission by a self-  
6        insured group.

7        (5) The funding commission, as part of the collection and auditing of the special fund  
8        assessments required by this section, shall annually require each insurance carrier  
9        and each self-insured group to provide a list of employers which it has insured or  
10       which are members and the amount collected from each employer. Additionally, the  
11       funding commission shall require each entity paying a special fund assessment to  
12       report the SIC code for each employer and the amount of premium collected from  
13       each SIC code. An insurance carrier or self-insured group may require its insureds  
14       or members to furnish the SIC code for each of their employees. However, the  
15       failure of any employer to furnish said codes shall not relieve the insurance carrier  
16       or self-insured group from the obligation to furnish same to the funding  
17       commission. The Department for Employment Services, Cabinet for Workforce  
18       Development is hereby directed to make available the SIC codes assigned in its  
19       records to specific employers to aid in the reporting and recording of the special  
20       fund assessment data.

21       (6) Each self-insured employer, self-insured group, or insurance carrier shall provide  
22       any information and submit any reports the Department of Revenue or the funding  
23       commission may require to effectuate the provisions of this section. In addition, the  
24       funding commission may enter reciprocal agreements with other governmental  
25       agencies for the exchange of information necessary to effectuate the provisions of  
26       this section.

27       (7) The special fund shall be required to maintain a central claim registry of all claims

1 to which it is named a party, giving each such claim a unique claim number and  
2 thereafter recording the status of each claim on a current basis. The registry shall be  
3 established by January 26, 1988, for all claims on which payments were made since  
4 July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all  
5 claim files in the possession of the special fund.

6 (8) The fund heretofore designated as the subsequent claim fund is abolished, and there  
7 is substituted therefor the special fund as set out by this section, and all moneys and  
8 properties owned by the subsequent claim fund are transferred to the special fund.

9 (9) Notwithstanding any other provisions of this section or this chapter to the contrary,  
10 the total amount of funds collected pursuant to the assessment rates adopted by the  
11 funding commission shall not be limited to the provisions of this section.

12 (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS  
13 342.122 shall forever remain applicable to premiums received on policies with  
14 effective dates prior to January 1, 1997, by every insurance carrier writing workers'  
15 compensation insurance in the Commonwealth, by every self-insured group  
16 operating under the provision of KRS 342.350(4) and Chapter 304, and against the  
17 premium, as defined in KRS 342.0011, of every employer carrying his own risk.

18 Section 2. KRS 342.1242 is amended to read as follows:

19 (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have  
20 one-half (1/2) of the liability for income benefits, including retraining benefits,  
21 payable for claims brought under KRS 342.732 for last exposure incurred on or  
22 after December 12, 1996. Income benefit payments by the Kentucky coal workers'  
23 pneumoconiosis fund shall be made contemporaneous with the payments made by  
24 the employer, except that the employer shall make all payments due under a final  
25 award or approved settlement until the liability of the Kentucky coal workers'  
26 pneumoconiosis fund is established under subsection (2) of this section and the coal  
27 workers' pneumoconiosis fund shall reimburse the employer for such payments to

1 the extent of its liability.

2 (2) The employer shall defend any claim brought under KRS 342.732 and upon  
3 conclusion shall seek participation in payment of the final award or settlement by  
4 the Kentucky coal workers' pneumoconiosis fund by making written request upon  
5 the director in the manner prescribed by administrative regulation to be promulgated  
6 by the executive director of the Office of Workers' Claims.

7 (3) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal  
8 workers' pneumoconiosis fund and financing the administration and operation  
9 of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget  
10 of the Commonwealth enacted by the General Assembly, a Kentucky coal  
11 workers' pneumoconiosis fund assessment at the rate of three percent (3%) is  
12 hereby imposed upon the amount of workers' compensation premiums  
13 received on and after January 1, 1997, through December 31, 1997, by every  
14 insurance carrier writing workers' compensation insurance in the  
15 Commonwealth and by every self-insured group operating under the  
16 provisions of KRS 342.350(4) and Chapter 304, from employers engaged in  
17 the severance or processing of coal. Likewise, on and after January 1, 1997,  
18 through December 31, 1997, an assessment at the rate of three percent (3%) of  
19 premium shall be paid by every employer engaged in the severance or  
20 processing of coal who is carrying his or her own risk.

21 (b) In addition to the assessment imposed in paragraph (a) of this subsection, an  
22 additional Kentucky coal workers' pneumoconiosis fund assessment at the rate  
23 of two and one-half cents (\$0.025) per ton is hereby imposed upon the total  
24 annual amount of tons of coal severed on or after January 1, 1997, through  
25 December 31, 1997, by every entity engaged in the severance of coal as  
26 required pursuant to KRS Chapter 143.

27 (c) As of June 30, 2006~~[September 1, 1997]~~, and each year thereafter, the

1 funding commission shall determine the assets of the fund and the claim and  
2 administrative expense liability incurred by the fund for all previous years and  
3 shall establish the rates under the provisions of paragraphs (a) and (b) of this  
4 subsection necessary as of January 1 of the next year to fully fund and prefund  
5 all claim liabilities and administrative expenses through December 31 of the  
6 next year of operations. The assessment rate authorized by this section for  
7 premiums received and tons of coal severed shall be set so as to receive fifty  
8 percent (50%) of the needed revenue from each assessment. Notice of any rate  
9 changes shall be provided no later than October 1~~[December 1]~~ of the year  
10 preceding the rate change.

11 (4) All assessments imposed by this section shall be paid to the Kentucky Workers'  
12 Compensation Funding Commission and shall be credited to a separate account  
13 within the benefit reserve fund within the Kentucky Workers' Compensation  
14 Funding Commission. In addition, the powers and responsibilities of the Kentucky  
15 Workers' Compensation Funding Commission including its fiduciary duties and  
16 responsibilities relating to assessments collected for the special fund pursuant to  
17 KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply  
18 to assessments collected for the Kentucky coal workers' pneumoconiosis fund  
19 created pursuant to this section. Each entity subject to assessments for the Kentucky  
20 coal workers' pneumoconiosis fund shall provide any and all information requested  
21 by the Kentucky Workers' Compensation Funding Commission necessary to carry  
22 out its powers and responsibilities relating thereto.

23 (5) These assessments shall be paid quarterly not later than the thirtieth day of the  
24 month following the end of the quarter in which the premium is received or the coal  
25 is processed or severed. Receipt shall be considered timely through actual physical  
26 receipt or by postmark by the United States Postal Service. Employers carrying their  
27 own risk and employers defined in KRS 342.630(2) shall pay the annual



assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.

(6) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(7) Claims for benefits by reason of the development of coal workers' pneumoconiosis shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers' pneumoconiosis fund shall be liable for payment of a part of the liability only for employees of employers engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a) and (b).

Section 3. KRS 342.1224 is amended to read as follows:

(1) The commission shall be governed by a board of directors consisting of seven (7) members. The seven (7) members shall include the secretary of the Environmental and Public Protection Cabinet or a designee~~commissioner of the Department of Labor~~, the secretary of the Cabinet for Economic Development or a designee, the secretary of the Finance and Administration Cabinet or a designee, and four (4) members who shall be appointed by the Governor.

(2) The four (4) appointed members shall include:

(a) One (1) member, selected from a list of three (3) submitted by the secretary of the Environmental and Public Protection Cabinet~~commissioner of the Department of Labor~~, who shall represent labor;

(b) One (1) member, selected from a list of three (3) submitted by the secretary for economic development, who shall represent employers, provided,

1           however, that these three (3) members shall represent employers who  
2           purchase workers' compensation coverage for their employees from insurance  
3           companies writing workers' compensation insurance in the Commonwealth;

4           (c) One (1) member, selected from a list of three (3) submitted by the insurance  
5           advisory organization having jurisdiction over Kentucky, who shall represent  
6           insurance companies writing workers' compensation insurance in the  
7           Commonwealth; and

8           (d) One (1) member, selected from a list of three (3) submitted by the associations  
9           representing self-insured employers in the Commonwealth.

10       (3) The members of the board of directors shall serve a term of four (4) years, except  
11       that the initial terms of the members shall be staggered as follows:

12       (a) The initial member appointed by the Governor to represent labor shall serve a  
13       term of one (1) year. Thereafter, such member shall serve a term of four (4)  
14       years;

15       (b) The initial member appointed by the Governor to represent employers shall  
16       serve a term of two (2) years. Thereafter, such member shall serve a term of  
17       four (4) years;

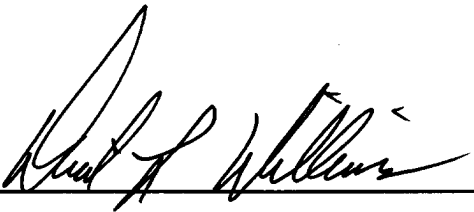
18       (c) The initial member appointed by the Governor to represent insurance  
19       companies shall serve a term of four (4) years. Thereafter, such member shall  
20       serve a term of four (4) years; and

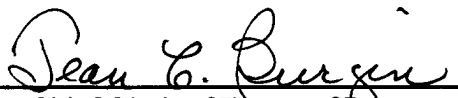
21       (d) The initial member appointed by the Governor to represent self-insured  
22       employers shall serve a term of three (3) years. Thereafter, such member shall  
23       serve a term of four (4) years.

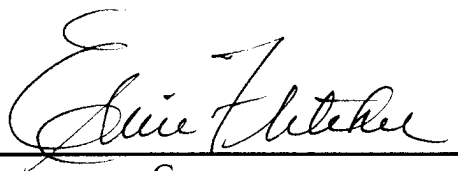
24       (4) The board of directors shall annually elect from among its members a chairman, a  
25       vice chairman, and a secretary-treasurer. The board of directors may also elect or  
26       appoint, and prescribe the duties of, other officers as the board of directors deems  
27       necessary or advisable.

- 1 (5) The board of directors shall appoint an executive director to administer, manage,  
2 and direct the affairs and business of the commission, and other staff persons to  
3 carry out the affairs and business of the commission, subject in each instance to the  
4 policies, control, and directions of the board of directors. The board of directors  
5 shall fix the compensation of all such persons and shall pay such compensation out  
6 of the funds of the commission.
- 7 (6) Notwithstanding any other law, the Governor, pursuant to an executive order, may  
8 cause the employees of the commission to be eligible to participate in the Kentucky  
9 Retirement System and the Kentucky Public Employees Deferred Compensation  
10 System.
- 11 (7) A majority of the board of directors of the commission shall constitute a quorum for  
12 the purposes of conducting its business and exercising its powers and for all other  
13 purposes. The majority shall be determined by excluding any existing vacancies  
14 from the total number of directors.
- 15 (8) The board of directors of the Kentucky Workers' Compensation Funding  
16 Commission are hereby determined to be officers and agents of the Commonwealth  
17 of Kentucky and, as such, shall enjoy the same immunities from suit for the  
18 performance of their official acts as do other officers of the Commonwealth of  
19 Kentucky.
- 20 Section 4. Whereas the date changes set forth in Section 1 and 2 of this Act require  
21 the Kentucky Workers' Compensation Funding Commission to take action prior to the  
22 regular effective date of legislation created during the 2006 Regular Session of the  
23 General assembly, an emergency is declared to exist, and this Act takes effect upon its  
24 passage and approval by the Governor or upon its otherwise becoming law.

  
Speaker-House of Representatives

  
President of the Senate

Attest:   
Chief Clerk of House of Representatives

Approved   
Governor

Date 